



Division of  
Enforcement

**COMMODITY FUTURES TRADING COMMISSION**

Ted Weiss Federal Office Building  
290 Broadway, Suite 600  
New York, NY 10007  
Telephone: (646) 746-9700  
[www.cftc.gov](http://www.cftc.gov)

July 16, 2024

**VIA ECF**

Hon. Alvin K. Hellerstein  
United States District Court  
Southern District of New York  
500 Pearl Street, Room 1050  
New York, New York 10007

Re: *CFTC v. Gemini Trust Co., LLC*, Case No. 22-cv-4563 (AKH)

Dear Judge Hellerstein:

We write in response to Defendant's letter dated July 15, 2024 (Dkt. 125). The Court should disregard Defendant's letter because it seeks no actual relief aside from a request that the Court take notice of arguments made in an entirely different proceeding having no legal or factual bearing on the matters before this Court. In the CFTC motion for summary judgment pending before this Court, the CFTC has explained in detail how Defendant's 31 written false statements satisfy the materiality standard under Section 6(c)(2) of the Commodity Exchange Act, 7 U.S.C. § 9(2), and this Court's prior rulings. *See* Dkt. 99 at 35-37, 43-45, 50-52, 56-57; Dkt. 118 at 14-19, 26-28, 34-37, 42-44, 49-50. Defendant nevertheless asks this Court to take notice of legal and factual positions the CFTC has taken in connection with a currently pending and contested Federal Rule of Civil Procedure 11 motion in *CFTC v. Traders Global Group, Inc.*, Case No. 1:23-cv-011808-ESK (D.N.J.), arguing that they represent contradictory positions on materiality.<sup>1</sup> But Defendant articulates no reason why a position taken in response to a motion for sanctions regarding the sufficiency of evidence for factual contentions in a different case, in a different district court, and involving different counsel has any bearing on the factual and legal authority set forth in the CFTC's pending summary judgment motion.

Defendant's letter is a transparent and wasteful attempt to distract the Court's attention away from the undisputed evidence in this case that Defendant repeatedly violated Section 6(c)(2) of the Act, while also attempting to impugn counsel's character in this case<sup>2</sup> and CFTC counsel's character in *Traders Global*. As requested by your honor, the CFTC is prepared to discuss its proof in support of

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<sup>1</sup> *Traders Global Group* involves no claim of false statements under Section 6(c)(2) but, rather, concerns registration and fraud claims against a retail forex dealer. *See* Dkt. 125, Ex. 2 (Complaint).

<sup>2</sup> Gemini baldly alleges that the CFTC has "throughout this case, directed numerous personal attacks towards Gemini, its principals, and its counsel," but cites no example to support this baseless accusation. Dkt. 125, at 2 n.1.

summary judgment in detail at the upcoming hearing scheduled to begin on July 23, 2024. Accordingly, this Court should deny Defendant's request outright.

Respectfully submitted,

/s/ K. Brent Tomer

Diana Wang

Andrew Rodgers

Katherine Rasor

Peter Janowski

Alejandra de Urioste

K. Brent Tomer

Attorneys for Plaintiff

cc: Counsel of Record via ECF